National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL
Advice Memorandum

DATE: June 12, 1998

TO: Glenn A. Zipp, Regional Director, Region 33

FROM: Barry J. Kearney, Associate General Counsel, Division of Advice

SUBJECT: Harcros Chemical, Inc., Case 33-CA-12544

530-4080-0175-8033, 530-4080-5012-6700, 530-8027-9000

This case was submitted for advice as to whether the Employer violated Section 8(a)(5) by withdrawing recognition from the Union based upon a petition from a majority of the bargaining unit stating that they no longer wished to be represented by the Union.

FACTS

The Employer apparently voluntarily recognized the Union at an unknown time. The most recent collective-bargaining agreement between the Employer and the Union expired on January 31, 1998. In December 1997, the Employer received a petition signed by four of the six bargaining unit employees stating that they "no longer wish[ed] to be represented by [the Union]." After verifying the signatures on the petition, the Employer notified the Union by letter dated December 16, 1997, that it had received "objective criteria demonstrating" that the Union no longer was the majority representative and that it was withdrawing recognition from the Union at the expiration of the contract. On January 27, 1998, the Union requested bargaining for a new agreement; the Employer refused. The Employer is not alleged to have violated the Act in any other way.

ACTION

The Region should dismiss the charge, absent withdrawal.

In Celanese Corp. of America, 95 NLRB 664 (1951), the Board held that upon the expiration of the certification year or a contract, an employer may withdraw recognition from a union if either the union has in fact lost majority support or the employer has a good-faith doubt of the union's majority support or the employer has a good-faith doubt of the union's majority status supported by objective considerations.(1) However, on April 13, 1998, the Board invited the parties in two pending cases(2) to file supplemental briefs on a number of issues including whether the Board should overrule Celanese Corp. The General Counsel's supplemental brief in those cases argued that an employer should not be able to withdraw recognition based on the good faith doubt standard set forth in Celanese, but should instead be required to file an election petition in order to test the Union's majority status.

Notwithstanding the above General Counsel position in Chelesa and Levitz, it does not appear appropriate in this case to issue complaint where the sole theory of violation is based on the General Counsel's position in Chelesa that Celanese should be overruled. In this regard, it is clear that the Union no longer represents a majority of employees. Thus, under the law as it now stands, this case should be disposed of in accord with extant Board law to dismiss charges alleging that an employer unlawfully withdrew recognition after the certification year or after expiration of a contract in circumstances where the union has in fact lost majority status among unit employees without any unlawful interference by the employer.(3)

In the instant case, it is clear that an overwhelming majority of unit employees no longer wish to be represented by the Union, as reflected by four out of six unit employees signing the untainted and unambiguous petition that stated that the employees "no longer wish to be represented by [the Union]."

In these circumstances, where we possess independent evidence that an untainted majority of the employees no longer support the Union, it would not effectuate the policies of the Act to allege that the Employer violated Section 8(a)(5) by refusing to bargain with the Union.

Accordingly, the charge should be dismissed, absent withdrawal.

B.J.K.

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[1] This principle was noted by the Board in Auciello Iron Works, 317 NLRB 364, 367 (1995), on remand from 980 F.2d 804 (1st Cir. 1992). Thus, the Board in holding that the employer violated Section 8(a)(5) by withdrawing recognition and refusing to execute a contract based on its "good faith" doubt that the employer asserted after the union had accepted its offer, specifically noted that the case before it did not involve allegations of an actual loss of majority status. Further, the Board stressed that its decision does not affect the "principle that a union and an employer are not permitted to continue bargaining if the union has actually lost it majority status and the employer and the union are aware of this actual loss." 317 NLRB at 375.

[2] Chelsea Industries, Inc., Case 7-CA-36846 et al. and Levitz Furniture Company, Case 20-CA-26596.

[3] See, e.g., Ayers Corp., Case 21-CA-29761, Advice Memorandum dated July 18, 1994; J.P. Data Com, Cases 21-CA-26562 and 26579, Advice Memorandum dated April 3, 1989.